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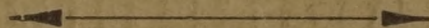
Texas & Pacific Railway Company

— BEFORE THE —

INTERNAL IMPROVEMENT COMMITTEE OF
THE TEXAS HOUSE OF REPRESENTATIVES

AT AUSTIN,

SATURDAY, JANUARY 26, AND MONDAY, JANUARY 28, 1889.



DALLAS, TEXAS :

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Mr. Chairman and Gentlemen :

By your courtesy I am here to present briefly my views as to the probable result of proposed railroad legislation by the Legislature of Texas. I have not yet been able to procure copies of the various bills, to ascertain their detailed provisions and can only rely on the general reports published from day to day through the press, and content myself with a discussion of the general principles involved in the contention between the Legislators and the owners of railroad properties.

When before your predecessors on former occasions, I said all that could then be said by me on these subjects and must very largely repeat myself on this occasion, especially as my time is limited and what I have heretofore said need not be much enlarged on.

The interest I have the honor to represent is the only one of magnitude and usefulness in your State that is not directly represented on the floor of the two houses of your Legislature. The agricultural, mechanical and commercial interests, as well as the leading professions, are ably represented on the floor of both Houses. This is deemed eminently proper by each and every other class, and is of itself free of criticism, yet, none of these interests nor all of them combined are so bitterly assailed as the inland carrier lines of your State, involving an investment of nearly half of your aggregate wealth. This investment too, has come from abroad—I might say, entirely from abroad—at your invitation and upon your solemn promises, repeated through all the channels of intelligence and by every department of the State Government, of absolute protection from unfriendliness or hostility. Notwithstanding this fact, scores of bills have been introduced, and are now being considered, looking directly to impairing both the value and usefulness of

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these enterprises. Yet, when its representatives appear before you, in your assembled or in your individual capacity, to remonstrate against ill-advised and ill-considered legislation, a hue and a cry goes up that the "railroad lobby is here," endeavoring to influence the Legislature. We have no means of being heard within the bar of the House or within the precincts of the Senate Chamber, and our only method of communication with the Legislature is by the courtesy of Committees. The railroad companies of Texas, notwithstanding the immense interests involved, are asking absolutely nothing at the hands of the Legislature except to be let alone by the potential power you wield. We are already crippled in revenue by legislation which impairs our legitimate net revenue, applicable to interest charges (to say nothing of dividends) never contemplated, by those who granted the franchises to the older roads, authorized prior to the Constitution of 1876. Our passenger rates have been cut down from charter rates of five and six cents per capita per mile, to three cents per capita per mile, and a limit has been fixed to freight charges which was not contemplated in the earlier charters granted to the first roads built in the State and which are in themselves, as to the new properties, wholly unremunerative; but we have preferred to submit uncomplainingly to those unjust restrictions placed upon what may be considered our charter rights, hoping that no further encroachments would be made upon the privileges originally guaranteed to us. We are here as representatives of the railroad interests of Texas. We are tax payers; we are citizens of your commonwealth; we have a right to be heard before the representatives of the people because they are *our* representatives and we shall ask or demand of the Legislature nothing more and nothing less than what are our rights as tax-payers and citizens; That much we do ask—we shall continue to de-

mand—for the point has now been reached where our self-existence is at stake. The properties I have the honor to especially represent comprise 1200 miles of railway in your State, which have never earned money enough from the carrying business and from all other sources to pay one dollar dividend to the stockholders, and during the five years last past, (as shown by the sworn statements of its officers, who I undertake to say are as honorable as the officers of the State government and as truthful as you or anyone else,) the earnings have fallen short of paying interest upon the investment, many millions of dollars. In the face of this, gentlemen of both Houses introduce bills and earnestly advocate their passage, the direct result of which would be to still further reduce the income of these properties. Among the list of railroad lines to be affected will be found some which have had long and doubtful struggles with poverty and financial disasters. Until now their final success seems reasonably assured, unless overtaken by calamities undeserved or unexpected.

It would seem that the history of these corporations, or the experience of those interested in and identified with them through their days of gloom to partial success, should furnish information most valuable to the legislator in the exercise of an enlightened judgment, when framing laws which must shape the destinies of these great corporations for years to come. We do not arrogate to ourselves superior wisdom. We only claim that our large experience in a business which is most difficult and complex, entitle our views to careful consideration so far as you believe they are based upon honest convictions. Speaking for myself, the best assurance I can offer of my purpose to state unvarnished facts, is the pledge that I stand ready to verify by *undoubted evidence* every statement I shall make in your presence.

I maintain that the Legislature of Texas cannot, by any restrictive legislation, diminish the income of rail-

roads in Texas, and especially those organized prior to the adoption of the Constitution of 1876, except in conformity to the act of February 7th, 1853, entitled *An Act to Regulate Railroads*, which Act became, so to speak, a part of the charter of all the railroads in Texas in existence prior to the adoption of the present constitution, which have brought themselves within the plain and obvious conditions of the first section of the act. Let us briefly consider the

ACT OF FEBRUARY 7TH, 1853.

Can the Legislature pass any law which is in conflict with the guarantees and provisions of the act of February 7th, 1853, which can become effective as against corporations in existence, either by special or general charter, prior to the adoption of the present Constitution of the State of Texas?

This question involves an inquiry too wide, and more comprehensive, than time will now permit for its full discussion; but the salient points, with a summary of the argument, may be presented.

The act of February 7th, 1853, was in force, at least until the adoption of the present Constitution. The question therefore is, can the Legislature of Texas, notwithstanding the provisions of the present Constitution, pass any general law upon the subject of rates, applicable to such lines of railway as are clearly embraced in the provisions of the Act, unless in harmony with sections one and fifteen of that Act, as compiled in Paschal's Digest Arts. 4885-4899) as follows:—

“Sec. 1. All railroad companies which have been heretofore incorporated, or which shall hereafter be incorporated, or relieved from the performance of any act required of them, or which shall accept of any donation or loan from this State, or which shall accept of the subscription of any county of this State, shall have all the

powers and privileges, and be subject to all the duties, liabilities and provisions contained in this Act."

"Sec. 15. It shall be lawful for the Legislature, at any time, to prescribe the rate to be charged for the transportation of persons and property upon any such road, should they be deemed too high; and may exercise the same power every ten years: Provided, That *no reduction* shall be made unless the *net profits* of the company for the previous ten years (the expenditures of the company being *bona fide*, and not with a view to defeat the operation of this section) shall amount to a sum equal to 12 per cent. per annum upon its capital stock, and then so as not to reduce the future probable profits below the said per annum."

All the railroads of Texas have been constructed since the passage of that Act and I think it will be conceded that not one of them is earning 12 per centum per annum upon its capital stock. Of these, notable mention may be made of the Houston & Texas Central Railway, the International & Great Northern, the Galveston, Harrisburg & San Antonio, the Galveston, Houston & Henderson, the Texas & New Orleans, the Gulf, Colorado & Santa Fe, and the Texas & Pacific Railway. The lines above enumerated were all chartered by legislation antedating the adoption of the Constitution of 1876, and were under the influence of the Act of 1853, and, in one way or another, accepted its provisions. The Texas & Pacific, Houston & Texas Central, the Galveston, Harrisburg & San Antonio, the International & Great Northern and perhaps all the other lines above named—and maybe others in the State—had received and accepted their franchises, and constructed (some of them entirely and others partially) their lines, before the adoption of the Constitution of 1876, and all of them had accepted loans and donations from the State and subscriptions from the

counties and some of them had been relieved of the performance of acts required of them.

The first section of the act makes it apply to all railroad companies, which *before that time were incorporated*, or "*after that time shall be incorporated*," or "relieved of the performance of any act required of them," and which shall accept of any donation, or loan from the State, or which shall accept of any subscription from any county in the State. All such shall have all the *powers*, and *privileges*, and be subject *to all the duties, liabilities and provisions* contained in the act. But in the 15th Section, the assumption and declaration of power to prescribe the rates to be charged, is coupled with the condition, that no reduction in rates shall be made, unless the net profits of the company, for the previous ten years (meaning of course, the ten years previous to the proposed reduction), shall amount to a sum equal to 12 per centum upon its capital stock, and then the reduction of rates shall be such as not to reduce the profits below 12 per centum per annum.

Now if the State has permitted this statute to remain unrepealed, and the stockholders of these railroad companies, with this statute as a part of the contract, have invested their money, can it be maintained that the State can, without literally complying with the terms of the contract, diminish the rates to be charged by railroads, either for passengers or on freights ?

If this general law conferred such vested rights upon the railroads of the State as to preclude the Legislature from interfering with the rates, except in cases where the profits equaled, for the ten years previous, 12 per centum per annum on the capital stock, the State, through its Legislature or otherwise, can only interfere with rates after first ascertaining that the earnings are equal to the standard prescribed in the act of 1853. It can not be said that any railroad company waived such

rights as it may have had under the act of 1853 by submitting to the rule of rates prescribed in the act 1879. This was the first general act prescribing rates, by the Legislature of Texas. And although the rates are probably lower than they would have been had the act of 1853 been applied to the proportion of earnings to expenses, as the measure of profits to which the corporations are entitled, yet the legislation has been submitted to as the standard of rates, which was continued for a term of ten years. At that time none of the railroad companies in the State contemplated the speedy approach of a period when the condition of financial centres would justify them pushing unfinished lines to completion, in advance of population and business, under a delusive hope that a rush from the overcrowded centers of populations in the Eastern States and Europe would overtake the track-layers and very speedily furnish remunerative business to the daring ventures. They were too sanguine. Many millions of money were hurried into these schemes, as the financial mist cleared under the rebound of 1869 and 1880, which have yielded no profit to the investor, but their mistake has enriched your State and your people and made your school fund a marvel to the other States.

It may be conceded that the act of 1853, so far as inconsistent with the provisions of the Constitution of 1876, was repealed by the adoption of the latter, and yet not affect rights which had previously become vested under or guaranteed by it, or which were expressly reserved by its terms. But its repeal could not impair or disturb rights, if any vested or were guaranteed under its provisions. But to save all questions in a highly technical tribunal, and as if to preclude doubt or controversy, the framers of your Constitution, tenderly conscientious of depriving any person of liberty or property, bottomed on either vested

or guaranteed rights, wisely provided against the divestiture of such rights as might have attached, or were guaranteed under any grant or statute of the State.

The provisions relating particularly to the subject, are as follows:—

ARTICLE 12.

“Section 3. The right to authorize and regulate freights, tolls, wharfage, or fares levied and collected, or proposed to be levied and collected by individuals, companies, or corporations, for the use of highways, landings, wharves, bridges and ferries devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control, and depend upon legislative authority.”

“Section 7. Nothing in this article shall be construed to divest or affect rights *guaranteed* by any *existing grant or statute* of this State, or of the Republic of Texas.”

I believe, and think it can be maintained by authority, that the railroad companies, which were clearly under the influence of the act of the 7th of February, 1853, and accepted the same by any of the means prescribed therein, then and thereby completed a contract with the State, as to all parts of the act, as inviolable as would have been amendments to their charters, accepted by the unanimous act of their stockholders in the most solemn manner. The act itself was a public statute, adopted before the State had fairly inaugurated its railroad enterprises. The repeal of its 17th section, by the act of the 26th of January, 1860, was evidently done in the interests of the railroads of the State. The State could have had no possible motive in expunging that section from the statute books, except in so far as its repeal would encourage the building of railways. The provisions of that section gave the State a mere privilege, which it could exercise or not, at its discretion, and inde-

pendent of the railroads. That is to say, the State could, by its own volition, purchase any railroad which might be built within its borders, under the 17th section of the act of 1853, by paying for it according to the letter of the statute. It is not difficult to perceive that this right of the State, existing in full force, might deter capital from embarking in railroad enterprises in Texas. Before its repeal no railroad companies could have resisted the right of the State to purchase, according to the terms of that section and no doubt the law makers, at that time, perceiving the injurious influence of that section, in preventing capital from embarking in railroad building, repealed it in the interest of the State. The repeal itself shows that the act of 1853 was recognized, both by the State and the railway companies, as being in full force, and that the lines of railway then being constructed were being built with reference to that act as a part of their franchises. It also shows the concurrent legislative construction of the act, as of the same force and effect as if engrafted upon the charters of the railway companies. If not, why should the State have denied itself this power by this repealing clause? It is not difficult to perceive the reasons which actuated the Legislature, at that early day, in the passage of the act of February 7, 1853, which is styled in its very title, "An act to regulate railroads."

THE OBJECT OF THE ACT OF 1853,

is most obvious. All the railway companies then in existence had a vested right by their charters to fix maximum rates of freight and passenger fares. The majority of them were limited to 50 cents per 100 pounds per 100 miles for freight and to 5 cents per mile for passengers.

These rates were arbitrary, and railroad construction in Texas was speculative, and such enterprises, to a great extent experimental. No one was wise enough, at that

early day, to determine whether, on the one hand, the exercise of these vested charter rights, during the legal lives of the corporations, would be oppressive upon the public, or, on the other hand, whether the limit fixed would, in a new country, allow the railroad companies to be self-sustaining. Then and ever since the laws of the State of Texas have permitted a conventional rate of interest at 12 per cent. per annum. The Legislature adopted a rational and wise method in prescribing these rules by which railroads should be governed. In fixing their tariff rates, one of the considerations passing to the State, from the companies then organized, was the surrender of their charter right to fix an arbitrary maximum rate.

The Act intended to offer the inducement—and a very great one it was—that the capital thus invested should not be at the arbitrary will of the State until its net profits should equal the maximum of the conventional rate of interest on money. As the respective companies accepted the terms and provisions of the act of 1853, they completed a contract with the State, that could not afterwards be disturbed by the State, either by its organic law, or by legislative enactment.

The State had the right to fix the rate, but it is an historical fact that, neither before the act of 1879, fixing the rates—nor, indeed, now, had or has any railway in the State a net earning of 12 *per cent. per annum* upon the actual cost of its property or of the capital stock. The State made the offer of a contract with the railway companies, and the railway companies accepted the offer, and it was discretionary with the State to legislate or not, in its wisdom, upon the question of rates within the limits fixed by the fifteenth section of the act.

The extrinsic evidence of the purposes and objects of the act of February 7th, 1853, shed no little light upon this subject. Several of the then existing railroad

charters conferred the right upon the companies to charge a maximum rate of five cents per mile for passengers, and fifty cents per one hundred pounds per one hundred miles for freight. This was notably true of the Houston & Texas Central Railroad Company, the Buffalo Bayou Railway Company, the Colorado Railroad Company, the Western Railroad Company (afterwards called the Southern Pacific Railroad Company), and perhaps others.

In the early history of the roads, through sparse populations, and reaching no commercial points of any importance, the rate might be so low as to drive the infant companies into bankruptcy, while years afterwards, as populations became dense, towns and cities sprung up, and the agricultural, pastoral, mineral, commercial and manufacturing wealth of the country became fully developed, these rates might bring revenue into the treasuries of the companies, entirely out of proportion to the capital invested; hence it was, that in its wisdom, the Legislature sought to devise a plan that would be just alike to the capital then being invited into the State, and to the people who were for all time thereafter to be the patrons of these great highways of commerce. The primary object of the act, then, was to pass a general law, fixing a *flexible* and *just* rule for the adjustment of rates, and inducing the railway companies whose charters gave them the arbitrary power to fix maximum rates, to yield that right and accept the provisions of the act of 1853, in the nature of an amendment to their charters; and at the same time to bring under the influence of the act and subject to precisely the same conditions, other railway companies that might come into existence under the subsequent legislation of the State. If the act of 1853 failed to accomplish this primary object, then a number of your railway corporations, embracing some of the oldest in the State,

have still the arbitrary power contained in their respective charters.

I do not maintain that the act of 1853 was not repealable. It was as much the subject of repeal by subsequent Legislatures, as any other general law. It was as clearly the subject of repeal as the general incorporated act, now on your statute books; yet as to the latter, no member of the legal profession will maintain that if the general corporation law were now repealed, it would divest any right that had been taken under its provisions by the corporation, whether railroad or not, which had organized under it, and was proceeding in the exercise of the franchises conferred by virtue of the acceptance of the general corporation act. The act of 1853 was repealable by any subsequent Legislature; but as a fact its first and fifteenth sections were not repealed until your State had nearly 3000 miles of railway, constructed.

THE ACCEPTANCE OF THE ACT WAS A CONTRACT.

The act itself was a proposition of the State through the Legislature; and in so far as it was accepted before its repeal by any railroad company, it became a contract between the State and such railroad company.

That the State can make a contract will not be denied. That it can do so only under some authority conferred by the constitution, or by statute, is equally incontrovertible. If, by its statute, passed by the Legislature, in pursuance of express or implied powers of the constitution, it offers to any particular person or corporation, to make a contract and the person or corporation accepts it, in the manner prescribed by the statute, it is then certainly the best defined and only mode by which the State can make a contract; and I am not aware of any other means by which a State can

make a contract with a natural person or with a corporation. In what consists the difference in the making of a contract through the provisions of the act of 1853, and through the medium of the general act of incorporation? All concede that a corporation takes rights as high and as inviolate, when it organizes under a general law, to the full extent and limit of the provisions of that general incorporation law, as if its charter were granted in specific terms by an authorized Legislature. And it is equally true that if immediately thereafter, the general incorporation act is repealed, its effect is not to impair or divest any of the rights and franchises conferred upon the corporation breathed into existence during its continuance, but only to prevent new companies from being formed and organized under its provisions. Its repeal does not impair the life of a corporation begotten by it, but it simply prevents the birth of any other corporations under, or by virtue of, the act.

The language is: "All railroad companies which have been heretofore incorporated, or which shall be hereafter incorporated," etc. All were alike to be entitled to "all the powers and privileges," and to be subject to all the duties, liabilities and provisions, contained in the act. The entire substance and equity of the contract is found in the terms of the agreement with the railroad companies which were then in existence or should thereafter be chartered to build roads; that in consideration of such investment their rates should not be so reduced as to prevent them from realizing a profit of twelve per cent. That a contract could spring out of a law thus making a promise to the companies in question, could scarcely be more forcible in its recognition of the obligation of the vested right. When the State said by that act "it shall be lawful" to make reductions in a certain ratio, or by certain rules—if by thus declaring, it was made lawful

to make reductions, and make them only by those certain specific rules, it would be unlawful to reduce rates otherwise than as prescribed. The great consideration of the whole question, as it seems to us is, that it was intended that all existing, as well as all future companies, should have all the guarantees and obligations of law, according to the solemn forms of legislative enactment, in order to induce railroad construction, and that the Legislature should not possess the right, and would not attempt to exercise the right, of reducing rates below a point enabling the companies to realize a specified per cent. on their capital. But at the same time, the State reserves to itself the right whenever, from any consideration of public interests, it saw fit to exercise it, to become the owner of the railroad property by paying the cost thereof, and twelve per cent. per annum interest, with specified reductions.

To strengthen the argument already advanced, suppose that a company, before the repeal of the 17th section of the act, had constructed one hundred miles of its road, and the State had determined to become its owner, and actually demanded that the railway company should sell its property in pursuance of and in accordance to the terms of the 17th section of the act of 1853, and had actually tendered the money and brought suit for the surrender of the property and franchises of the company; could the company have resisted the demands of the State? I think it will be conceded that the company could not resist such a demand, and for the reason that the 17th section was a contract between the company and the State securing *the right* to the State to purchase at its option and only at its option, but which right was surrendered by its own repeal of that section. Decided by this illustration, it will be seen that this section would, in the case supposed, be more than a legislative law, which could not be disregarded by the company. If

this be true of the 17th section, it must be equally true in illustrating the rights of railway companies as against the State, through the action of the 1st and 15th sections. It can not be said of the 17th section, when in force, that it was a contract which the State could enforce, and that the 15th section was not such a contract as the railway companies could enforce against the State.

Suppose, while the act of 1853 was in full force, and while, under your original law, the Legislature had the right to grant special charters, the Legislature in chartering a named company had inserted in the charter, a clause as follows: "Be it further enacted, That this company shall be entitled to all the rights, privileges and benefits, and subject to all the duties and obligations of section 1 and 15 of the act passed by the Legislature of Texas on the 7th day of February, 1853, entitled, 'An act to regulate railroads,' " would any enlightened court hold that those two sections did not become as much a part of the charter as if re-enacted in *hæc verba* in the charter? The Supreme Court of the United States, in the case in *16th Wallace*, page 244, declared such an act valid and binding, even to an extent of a provision therein referred to, exempting the property of the railroad company from taxation.

The entire internal improvement system of some of your sister States is based on that character of legislation, by which charter powers were conferred by reference to other charters, or parts of general laws.

Is not our proposition bottomed on the same, or fully as sound reasoning? Here is an act declaring what every railroad company shall be entitled to, and what shall be required of it, and it comes into existence under that declaration and guarantee, and accepts the terms. It sees and realizes that the State has declared by statute, and still declares by an unrepealed statute, that "all railroad companies heretofore or hereafter incorporated

shall," etc. It belongs to that class, accepts the franchises of the State, and invests its capital in the creation of *immovable property* under the solemn and continuous statutory guaranty of the State, that the earning capacity of that property shall not be impaired until a declared standard of profit can be realized.

If I am right in assuming that the acceptance of this general law by any company was a contract, another important question arises as to whether this contract was impaired by the adoption of the constitution of 1876? Certainly the act itself, as to any future right that might be acquired under it, so far as the Constitution of 1876 is inconsistent with it, must fall; but, so far as vested rights were taken under it, the subsequent Constitutional Convention could not, even though so intended by its delegates, divest this right. But, fortunately for us, it is not necessary to argue that question, because the 7th section of article 12 of the Constitution of 1876 expressly declares: "Nothing in this article shall be construed to divest or affect the rights guaranteed by any existing *grant or statute* of this State, or of the Republic of Texas."

Now whether this be a vested right or not, it is a right "*guaranteed*" by the State of Texas, by a statute in full force and vigor; and whether the rights acquired by a railroad company under that statute rise to the dignity of *vested rights* in the legal and technical sense of the term, still, they were "rights guaranteed by a statute of the State."

EQUITY AND JUSTICE.

The view I have taken of the effect and consequences to railroads and to the State, of the provisions of the act of 1853, are consistent with the soundest rules of equity and justice. The State, neither through its Legislature nor otherwise, has the right to confiscate the property of

natural or artificial persons, so long at least as that property is held under the sanction of law. Those railroads, each and every one of them, were constructed by capital which came into Texas at the invitation of the State. The State granted the railroad companies certain rights and privileges as an inducement to the investment of capital within her territory. Independent of the act of 1853, and independent of any immunity contained in the charters of the railway companies against unjust and oppressive legislation, can the State by a reduction of the rates or otherwise, so impair the capital of these incorporations as to leave them without a fair return upon their investment? There is not a fair minded man in the State who will say that the Legislature should exercise, even if it possesses, such power. And is that not another form of expressing the true intent and meaning of the act of 1853? Was not that act inspired by the very principle stated? While there might be a controversy as to the amount of profit that capital invested in railroads should be permitted to earn, yet it is conceded that they are entitled to a reasonable return, at least equal to that earned by capital embarked in other lawful and industrial enterprises.

The proposition is too clear for argument, that the companies whose charters give absolute power to fix rates to a specified maximum, if they surrendered these rights, in reference to the provisions of the act of 1853, acquired all new rights prescribed under the same act as inviolate as a charter right.

It was the part of wisdom to make the same provision applicable to all roads. Motives of public policy prompted it, and this if nothing else should sustain the act, else you could adopt no uniform legislation as to the rates on these great transportation lines.

The charter of one of the great lines of your State provides: "The State expressly reserves the right to

regulate the rates of freight and passage upon said railroad, making no distinction between said railroad and any other in the State." This company received and accepted its provisions in 1870, and took State and county subsidies. How could the Legislature make a rule applicable to this company which could not apply equally to those companies which had absolute charter rights to affix maximum rates, but who surrendered them in deference to the act of 1853 ?

The charter of another company whose lines reach your chief commercial centers, contains this provision :

"The said company in its charge for freight and passengers shall be governed by the general railroad laws."

This company was incorporated in 1866, while the act of 1853 was in full force, and completed its line before the Constitution was adopted. It also took State and county subsidies, and thereby clearly brought itself within the powers of that law.

The wisdom of the framers of the law in question, therefore, becomes most manifest in applying its provisions to all railroads.

The just determination of the question whether the railroad companies in existence in the State, at the date of the passage of the act of February 7, 1853, or which sprung into existence after the passage of that act, and before the adoption of the Constitution, and which were either relieved of disabilities or took subsidies or accepted loans from the State, or took subsidies from the counties, are entitled to all the benefits and privileges, and burdened with all obligations of sections one and fifteen of that act, does not necessarily involve the question whether a corporation can take a *vested right* under a general law ; or rather the abstract question of the *technical vesture of right* might be waived. Concede, as all must do, that

the act of 1853 remained in full force until the adoption of the Constitution of 1876, it must, also, be conceded that the act did *guarantee* to such railroad companies as came within its purview, all the rights of that statute, so long, at least, as it remained in force; and this act being in force at the adoption of the Constitution, the 7th Section of Article 12 of the Constitution, providing "nothing in this article shall be construed to *divest* or *affect* rights guaranteed by any existing grant or *statute* of this State," etc., whether intended or not, certainly embraced and saved the rights guaranteed to those railroad companies under the statute of 1853.

The Legislative department clearly recognizes the construction we give to Section 7, of Article 12, in the final title of the Revised Statues, page 718 :—

"Section 4. All civil statutes, of a general nature, in force when the Revised Statutes take effect, and, which are not included herein, and which are not hereby expressly continued in force, are hereby repealed."

"Sec. 5. The repeal of any statute, or any portion thereof by the preceding section, shall not affect or impair any act done or right vested or accrued, * * but every such act done or right vested or accrued * * shall remain in full force and effect, to all intents or purposes, as if such statute, or part thereof so repealed, had remained in force," etc.

"Sec. 12. Nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined, or limitation or condition imposed by any law that may be repealed by the repealing clause of this title."

The framers of the Constitution clearly intended that the rights existing under previous legislation should not be disturbed by anything contained in the Constitution, by a technical construction of what were and were not *vested or guaranteed rights*; and that it should not

rest alone upon a declaration of rights derived under existing grants, such as patents for lands, unrestricted and unrepealed franchises contained in acts of incorporation ; but it intended and so declared that the Constitution should not *affect* rights guaranteed by any existing statute placing it upon higher and broader grounds than the technical question of divesting vested rights; therefore, if this right to immunity against legislative control, except by conditions contained in the 15th Section of the act of February 7, 1853, was an existing right guaranteed by the statute (and we think no one can successfully deny it), then this article of the Constitution did expressly secure to the railroads the rights guaranteed by that statute, to-wit: The right of impunity from legislative control until their earnings should pay all necessary expenses and fixed charges, and after that, pay 12 per centum per annum, on the capital stock. And this is still further confirmed by the sections quoted from the final title of the Revised Statutes, using almost the same language, and certainly intended by using the terms "shall not affect or impair any right vested or accrued."

The construction we have endeavored to give to the act of 1853, in its operation as a contract or guaranty with any railroad company that has accepted its provisions in the modes already stated, cannot, as we believe, be successfully refuted; and if at all, it must be upon the most highly technical grounds.

It is difficult to perceive any reason why the State can, by a special law, tie its own hands, and deprive itself of the power to abrogate or impair a contract, and yet have no power to do the same thing under a general law, which in its nature is public and universal as to the classes it may affect, and who may accept the same.

THE STATE CANNOT AFFORD TO BE TECHNICAL.

That the passage and continuance of this general

law, upon the statute books of Texas, has brought many millions of dollars into the State, under the apprehension that its provisions were in the nature of *irrevocable contracts*, no intelligent men will deny. And even if, technically, it can be said that no railroad company in the State acquired such vested rights as to the matter of rates, as I have already contended for under the 1st and 15th sections of the act of 1853, how can the State, in good faith, avail itself of that technicality to deprive capital thus invited and induced, of the protection which those provisions give it?

The State cannot afford to be technical. The State cannot afford to act in bad faith to her citizens, either as a matter of right, or as a matter of sound policy. And, on the question now under discussion, the State has less pretext to violate its plighted faith, than if the soundness of the rule laid down in the 15th section could be controverted. I maintain that no wiser rule could have been adopted, or could now be adhered to, than the rule established by the 15th section, which is in itself a rule of right. It was but formulating what was the true and just relation between the State and the corporations, and placing that formula upon the statute books.

The capital invested in a railway is as much entitled to a fair return year by year, as that invested in agriculture, in commerce, in manufacturing, in mining, or in any other lawful pursuit. To get that return, such a rate must be permitted, upon the volume of business, as will pay all the current and necessary expenses of maintaining the line in a safe and good condition, paying the wages of employes, and all other expenses necessary to the maintenance and operation of a railroad, and then leave a fair per centum on the capital invested. Any rule which will not do this, is a confiscation of capital

which is not tolerated under any civilized, and especially a republican, government.

Suppose, however, that it shall be held that this general law of 1853 did not have the effect, when accepted by the railroad corporations, to operate in the nature of an amendment to their charters, or to give them vested or guaranteed rights under the 15th section, construed *in pari materia* with the first section; yet, when it is considered that the act was passed for the purpose of encouraging and promoting the construction of railway lines through a new country, and that its effects, in part at least, have met the forecast of the wise men who conceived and adopted that legislation, in checkering your State with over 8,000 miles of railroad, costing hundreds of millions of dollars, in capital brought from other States and other countries, can you, the successors of the men who passed that act, and the representatives of a State who held it out continuously for nearly 25 years, as an inducement to capital to embark in these enterprises, afford to stand upon a mere technical question, and say, "We will not execute the act of 1853 in good faith"? Texas is a land of traditions. She has a long line of patriotic successions. Every department is full of them. Those who fell and those who survived her early struggles for independence established a priceless heritage of political freedom. But it was left for those who constructed your highways to create your financial independence, and become, as they are, the authors of your present greatness and prosperity. The former you have honored in brass, in history, in story and in song. The latter ask only that fair and liberal existence guaranteed in the plighted faith of the men who won this fair land from the Mexican and transmitted it to you, with the injunction to meet their promises with the same stern, true honest faith which their brave hearts gave them.

RAILWAY COMMISSIONS.

If I am correct in the view I have taken of the act of February 7, 1853, it follows as a necessary consequence that a Railway Commission, independent of all other considerations, could not be clothed with power to change or affect rates on commercial traffic ; but I maintain that the Legislature of Texas, whatever power it may have to appoint a Commission, can not, under the Constitution of the State, clothe that Commission with any power or authority to increase or diminish rates, or make classifications, the effect of which would be to increase or diminish the rates upon the transportation of freight.

The last clause of Sec. 2 of Art. 10, of the Constitution of Texas, reads as follows :

“The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State ; and shall from time to time pass laws establishing REASONABLE maximum rates of charges for the transportation of passengers and freights on said railroads, and enforce all such laws by adequate penalties.”

This embodies the Constitutional power of this Legislature to fix rates upon railroads in Texas.

I will not assert that railway management, and railway service, have either of them reached a state of perfection. That there are evils and hardships, can not be truthfully denied ; but that they are less numerous than is sometimes asserted by gentlemen who either have some special grievance, or who hope to promote their political fortunes by creating a popular prejudice against wealth and the aggregation of capital, I sincerely believe. I do not believe one intelligent man on this committee gives credence to a tithe of what is

said on this subject. But I think I may assert with confidence that all the evils and hardships that do exist have already ample remedies provided by law ; remedies, too, which are within the reach of the humblest citizen in the land ; and I have yet to learn that any of the constituted judicial tribunals of the State, from the justices' courts to the great tribunals of final resort, have ever denied even-handed justice as against railway corporations, in favor of the poorest man in your State.

Railroad corporations are artificial persons. They are, in almost every respect, except in their right to vote and in the duty to bear arms, citizens of the State. They exercise rights conferred by law. They receive and pay out money. Their property is assessed, and they pay the taxes levied upon it. They contribute equally with all other property holders in bearing the burdens of government. Why, therefore, are remedies to be provided against them which do not apply to other persons ? If there are grievances in favor of any, even the humblest in the land, which have no appropriate remedies upon your statute books, provide them by general laws, applicable alike to all other persons against whom such remedies may be enforced, and make them proper, wholesome and just remedies. It cannot be logically said that, because other States have provided for the appointment of Railway Commissions, and have such tribunals in actual existence, that therefore Texas needs *this luxury*.

Texas need not pass repudiation acts because other members of the American sisterhood have dishonored their fair names and bedimmed the lustre of time-honored traditions by refusing payment of legal obligations.

The question is, *does Texas need a Railway Commission ?*

Evils may exist in other States that do not exist here. Remedies may be applied to other systems, wholly inapplicable within the borders of Texas. The fact that Missouri has a commission, or that Georgia and Illinois or Massachusetts or Iowa have commissions, proves nothing on this question in its relation to this State. Compared with any one of them Texas is a new State. Compared with any one of them, the railroad system here is in its infancy. Compared with any or all of them, the conditions here in climate, soil, area and population, volume of tonnage, amount of travel, etc., are dissimilar.

There is no complaint in Texas that the maximum rate established by the law of 1879, for the transportation of freights, in its practical operations, is too high. In fact I assert, with a confidence that challenges intelligent contradiction, that there is no dissatisfaction in the State with the maximum rates actually charged by railway companies for the transportation of freights.

The Constitution itself, in terms too plain to admit of doubt, not only authorizes, but requires the legislative department to fix *reasonable* maximum rates and prevent unjust discriminations, extortion and rebates, and the Legislature, soon after the adoption of the Constitution, diligently set about discharging this important trust, and their labors resulted in the act of 1879, which was incorporated into the Revised Statutes as sections 4256, 4257 and 4258, making a penalty of \$500 for each case of extortion, rebate, draw back, or unjust discrimination, recoverable at the suit of the party injured. What plainer or easier remedy can you provide for the protection of the shipper, against the unlawful acts of the common carrier, than this clear, explicit, and unambiguous statute?

The shipper needs no commission to inform him when the law has been violated. You might as well provide methods by which, at the expense of the State,

all the wrongs of individuals shall be ascertained and righted, as to provide a special method of discovering and enforcing these rights and adjusting these wrongs. It is just as important to constitute a forum at the expense of the State to ascertain when usury is extorted by a bank, broker or other money lender, and to require the enforcement of appropriate penalties. It is well known to every member of this committee, that the citizen is not at a disadvantage in any of the courts of this country, when litigating with a railway corporation. If he is poor and unable to give security for costs he can sue *informa pauperis*, and he is never at a loss to find an attorney who will institute his action, and prosecute his case through the courts, *for a share of the recovery*. Juries are ready and willing to do at least justice to the citizens, as against railway companies ; and no one complains or has reason to complain, that the judiciary have not acted with perfect fairness to the citizen in declaring the law as between the citizen and corporations.

Every act of your Legislature, the burden of your public journals, thousands of letters written in the interest of the State of Texas, have all given tens of thousands of assurances, in the most public and solemn manner, that the utmost good faith would be observed then, and in all time to come, toward capital which would be contributed to the development of a country whose territory was larger than that of any other State in the union, and whose population and wealth were so strikingly and enormously disproportionate to its area. Your people, through every medium of communication, were the more urgent on these questions, because you were without navigable streams, and the products of your soil, so largely in demand and so marketable in all commercial centers of the country, could have no profitable outlet without the construction of long and expensive lines of intercommunication.

The policy that I have indicated was foreshadowed and repeated in the legislation of your State, from its admission into the union, until the past few years. A different policy inaugurated now, by legislative enactment, which looks to an unjust burden upon these great properties, will as surely stop the flow of capital into your borders as effect follows cause. I know this belongs to a character of propositions difficult to prove in advance of actual demonstration, and I also know equally well that there is not a member of this committee, or of the honorable body which you represent, who would pursue a line of policy calculated to retard the prosperity of your grand State. In your growth and greatness, your interest, and that of capitalists whose money, more than any other cause, has stimulated and promoted your present high prosperity, would appear to be identical. The capital invested in your railway systems has, as yet, been unable to realize a reward. The sworn returns from all the railways of Texas, as reported to you by your Comptroller (and which you must take as authentic statistics), show that the railway system of Texas cost, in round numbers, hundreds of millions of dollars. This is simply first cost, not including the improvements on the properties since they were first put in operation, without estimating the outlay for terminal facilities since added, the replacement of iron with steel rails, stone abutments and piers for piling, and iron for wooden bridges. It does not include expensive ballast of stone and other material which is being put into your roadways as fast as the earnings will justify, nor does it include the enormous additions to the equipment to your lines. Under these circumstances we ask, is it wise to put it in the power of any Governor, whoever he may be, to appoint three men, who shall be clothed with the absolute power, without restriction or limitation, to prescribe the rates

at which passengers and freight shall be transported, regardless of what return it may bring to the capital invested? Put yourself in place of the capitalist, with surplus money at your command, would you, in the face of such legislation, invest money in railroad enterprises? Would you put at hazard the savings of a life time, to the caprice and will of *three men appointed by one man*? There is not a man within the sound of my voice who will answer yes. Capital is proverbially timid. This applies to all capital, North or South, in Europe or America. It applies to capital in all past time; it applies to capital in the present; it will apply to capital in the future. Suppose you should change the interest law of this State so that capital on loan could not command more than four per cent. per annum, and that all in excess of that amount would be usury, and not collectable: would you not frighten capital from your borders? Why was the provision incorporated in your Constitution, making the legal rate eight per cent., and permitting a conventional rate of twelve per cent.? It was to attract capital hither; it was to induce money to leave the older States, where there was a plethora, and where less remunerative rates were allowed by law, to come into this new and growing State and reap a rich harvest. Every intelligent man knows if the provision were changed it would drive capital out of Texas, and prevent new capital from flowing in. Hundreds and thousands of men in the older States, attracted by this liberal and wise provision, have sold their property and have become citizens of Texas, and are living on the money loaned at the rate of twelve per cent. per annum. Strike this provision out of your Constitution and you would drive these men out of your borders, or impoverish them if they remain, and prevent others, actuated by similar motives, from adding to your population and your aggregate wealth.

Only two or three of the States that have appointed commissions have conferred upon them the powers contemplated by the proposed change in your laws now under consideration ; and in one of them, already, they have been shorn of that power. And I may add, with due respect to the States that have adopted this policy, that it is a gross departure from the spirit of our institutions, to clothe three men, or any number of men appointed by one man, with power to arbitrarily control (or confiscate, if they will), millions of capital invested under an implied contract with the State that it should have equal protection with all other capital.

Had the contemplated provision been engrafted in your constitution when adopted in 1876, the millions of capital since invested in your State, would have had fair and timely notice of the risks it was taking. But after capital has come, under friendly invitation, and with at least implied guarantees of good faith, I do not hesitate to declare that it is unfair and unjust, in a great State like Texas, even if she had every mile of railroad needed now, or in all time to come, to adopt a change so radical in her policy towards these properties. It is not proposed to treat money in any other form, in this arbitrary and radical manner. You still allow the ginnerers of cotton, the compress companies, the wharfage companies, the insurance companies, banks, and all others who take toll from the products of the land or the industries of the country to measure their demands by their own cupidity, or by the necessities of the tiller of the soil. You still permit the merchants to make their own profits on the absolute necessities of life, which make up the food and the raiment, and the shelter, and in a word, all the comforts and all the luxuries of your vast population. The lumber mills of your eastern pineries, the lumber merchants, the carpenters, the brick makers and the brick and stone masons,

and the manufacturers of farming implements, are left to their exactions on your people without limit as to charges, and you furnish no special remedies to their customers.

DISCRIMINATING LEGISLATION.

The whole theory of special railroad legislation, whether organic or statutory, is that railroads and railroad property must be subjected to rules and regulations not applicable to other kinds and species of property; that forums must be created for hearing and determining complaints against this class of common carriers, that shall have jurisdiction of the issues involved between no other parties, whether artificial or natural persons. The entire proceeding is upon the idea that these forums must be free from all interest in railroad properties, but are not interdicted from being shippers or carriers of freight. The largest shipper in any of the States where railroad commissions have been established would be eligible as a railroad commissioner, although his profits would depend upon the lowest possible rate of freight that could be established; but he is made entirely ineligible if he own railway property. The true spirit of impartiality is that the juror and the court shall be interested on neither side of the question being determined. The theory of the friends of railway commissions is, further, that rules of evidence must be prescribed as applicable to hearing and determining alleged causes of grievance, against railway companies, not known in any other class of litigation. From the decisions and rulings of these commissions no appeal or writ of error lies to any revising tribunal. Putting the whole question in few and plain words, the whole system of railway commissions is discrimination against and hostility towards railway property. As I say elsewhere, the remedies provided by statute are ample for any possible grievance

that may arise, or ground of complaint preferred by any individual against the acts and doings of a railroad company. Indeed, the common law, as applicable to common carriers, is full, complete and explicit. It applies to all carriers, and its recognized rules of evidence are the same that control the admission of testimony, oral or documentary, in all the courts, and between all classes of litigants ; and either party to the proceeding is entitled to an appeal or writ of error, as in other cases in which issues are determined. And if you can create *a railway commission*, and clothe it with power to fix the rates of traffic on all the railroads in your State, "without due process of law" as guaranteed by the Federal Constitution, and give no right of appeal or writ of error to the railway company, and if such a law would be constitutional, then you must admit that the commission can arbitrarily fix rates that in their results might be a confiscation of the railroad properties of your State. And from their decision there would be no redress. One of the purposes and objects of the proposed legislation is to create such a commission and clothe it with such powers.

All law writers, courts and statesmen, in Europe and America, have been profuse in their eulogies of the common law. It was said by one of England's eminent men that "no one was so high as to be above the correcting influence of the common law, and no one so low as to be beneath its guardian care." When a government, State or national, republican or monarchical, yields itself to unjust discriminations against honest and laudable callings and necessary avocations, it endangers not only the existence of that government, but of every enterprise that deserves its protection. The spirit of communism that levels its deadly shafts to-day at railway property, will to-morrow hurl them at commerce in all

its varied forms, and aggregate wealth in any shape it may have assumed, whether under the direct sanction of law or otherwise.

I do not understand that a legislator is an automaton. I have never heard that it was the duty of a representative to voice in his votes the pernicious and hurtful sentiments of his constituency, or to formulate into law the unjust prejudices of any part of the community represented by him. It behooves the representative to examine every question calculated to affect the public welfare, or the interests of private individuals, or of aggregations of individuals, and determine for himself whether the proposed legislation will be hurtful or not ; or, if not positively hurtful, whether it will subserve any general good, and act accordingly. If you would create a separate forum to determine the value of transportation by railroad and enforce penalties for the violation of their orders, or for violations of law, you would have the same right to change the constitution so as to create a separate court to hear and determine the complaints of tenants against the landlords, and to fix the value of wages in your cotton mills and your compresses, and every other manufacturing establishment within your borders, and also to regulate and control the price of the manufactured articles. And the principle would hold good as to all avocations.

DISCRIMINATION.

Discrimination by railroad companies is denounced as an offense deserving punishment by the infliction of the severest penalties, and yet it is proposed that the law, both organic and statutory, shall discriminate against them by constituting a forum, clothed with power to measure the value of the transportation of a ton of freight from one mile to eight hundred miles. You propose to clothe this forum with arbitrary powers for the

government of one class of transportation companies alone, and from the acts of this forum of arbitrary and unlimited powers, that more than a hundred millions of capital shall have no redress, such as is allowed the humblest citizen of the land, or to the smallest corporation that may be organized under your general laws. And singularly enough, this new forum is to be clothed with powers to hear and determine complaints *against* railroads, but shall have no jurisdiction to right the many wrongs of which the railroad companies are the victims.

It is true the capital thus to be proscribed is owned in other States and countries, invited here by legislative acts and resolutions, and by the press, for a period co-extensive with your existence as a State. Suppose it was the capital of your own people, generally distributed over the State, would the proposed legislation be seriously considered? It may well be doubted whether, if proposed, it would command any favor.

No such restrictions are thrown around such properties in States in which they are owned by citizens. Look at Pennsylvania, with the best system of inland transportation in the world, yielding a revenue to the State sufficient to defray all her expenses. Railroad properties there have never been burthened by such discriminations. The natural laws of commerce, unhampered by statutes, have given the tonnage of that State the cheapest tariff on this continent, and at the same time, fair dividends to the stockholders.

New York has prospered in her trade and commerce without a parallel, under the same great laws, and without restrictive statutes. True, the mad, senseless clamor of the Anti-monopoly League of the city of New York, organized and promoted, not in the interest of the producer, but of the *produce gambler*, has recently intimidated the Legislature into the creation of a commission,

but one without such powers as the pending resolution proposes.

RAILROADS IN TEXAS ARE NOT MONOPOLIES.

The cry of monopoly, as against them, is the slogan of the hustings. Under your general law, any ten men may obtain a charter at a trifling expense to build a railroad parallel to, or competing with, any line within your borders, with connecting links to every hamlet, town and city in every county of your State, with the same rights, powers and privileges, as have already been conferred on other railway corporations organized since the adoption of the constitution of 1876. If your people will risk their capital in new railroads, instead of loaning it at 12 per cent. they can have competing lines in every county town, and every important shipping point.

Railroads in Texas, therefore, I repeat, are in no sense monopolies. It is no answer to this assertion to reply that when roads are built, stronger corporations buy them and operate them in their general system. Railroad capitalists cannot buy, if owners will not sell. If your citizens will hazard their capital, there is no let or hindrance to building new and independent railroads from Galveston to St. Louis, or to New Orleans, or to the city of New York.

To this it may be replied that new lines would not pay interest on the capital invested. If this is a fair answer to the declaration that railroads *are not monopolies*, you could prove by the same rule that a cotton compress at any given point was a monopoly, because there is not business enough at that point to invite competition. And by the same process of reasoning you could prove any business a monopoly.

Another substitute for argument, equally as unfair and senseless is the denunciation of the so-called "Wealth of Railroad Kings." Does the fact that an

officer or a stockholder of a railroad company is rich, furnish any argument for harsh and unjust legislation? The same reasoning would justify hurtful legislation against the cattle interest, because there are rich so-called "Cattle Kings" in your State.

It is a capital mistake often made in the halls of legislation, and on the hustings, to declare a reduction of rates on freight necessary, because railroad owners are rich. I have already shown by authentic and uncontradicted statistics that no railway in the State has earned enough to pay any dividends to its stockholders. The fortunes that are supposed to have been amassed by railroad men in America have not been derived, to any considerable extent, from the earnings of these properties. The largest dividend paid on the stock of any of them is much less than lawful interest in Texas. These men have made their fortunes by speculation. It is much more profitable to loan money in your State at the conventional limit of interest than to hold stock as an investment in any railroad company in the United States. And it must be remembered, too, that the number of stockholders in railways who have not grown wealthy is infinitely greater than those who have. I am familiar with the affairs of at least one railroad in your State, whose stock is held by more than two thousand different persons, who are awaiting an increase in the volume of tonnage, consequent upon a well founded hope of increased productions as the State improves.

We told your predecessors years ago that unfriendly legislation would bankrupt existing corporations and palsy the hand of the builder of new lines. We did not pretend the gift of prophesy ; we were only reasoning from cause to effect. Since that time, about 4,500 miles of the lines of Texas have been compelled to suspend the payment of interest and apply

all their earnings to improving properties so dilapidated as to be unfit and unsafe for the transportation of passengers and property, and in such condition as to invite the action of the State to forfeit the franchises of some of them. Many were sold to discharge their mortgage debts. Others are on the verge of ruin. The line I represent especially, contributed its earnings for nearly three years with a contribution of nearly \$2,500,000 from its stockholders who held certificates of full paid stock, to replace its worn-out rails and its decayed and worn rolling stock. And where do you see the grader and where do you hear the heavy thud of the spike maul in the construction of new lines? The forces are disbanded, or gone to more inviting fields. The new lines are on paper and there they will and ought to remain, until the biennial threats of hostile legislation are withdrawn. Senators have been made and Representatives to Congress have been elected on this hobby, but has Texas, having more of the natural elements to make her the Empire State of the American Union within her grasp, no higher ambition than to make Senators and Representatives from the ranks of her learned professions? Has her commerce, her agriculture and her mechanic and mining interests no claim on her attentions? Yet we know full well that until you twice or thrice multiply your railroad mileage you cannot develop your countless millions of unrealized wealth. And where can you find capitalists, in the light of the experience of those who have come to your rescue in the past, and given you hundreds of millions of increased wealth and two millions of population under your assurance of protection, while a continued menace is held over the millions already invested? They will not and ought not to come.

My friends, I am much more largely interested in the soil of Texas, than I am in the stocks and bonds of her railroads. Of the latter I have scarcely enough to give me a decent burial,

of the former I have enough to "keep the wolf from the door" the few remaining years of my life. I have associations in Texas born in the hours of adversity, and I may say, of storm and blood, which I would not disturb for all I may expect from the railroad interest of Texas, direct and remote. But I would hazard an opinion: Let this senseless war against railways and railway capitalists, here and elsewhere, progress to its logical sequence, and the next attack will be made upon individual capital, and then the anarchist and socialist will rule the hour. Continue to promote the ambitious schemes of a few men who are crazy for place and power, and there are men under the sound of my voice who will live to see the day when they will wish they had not been born. The true office of government is to protect all alike. To protect labor so as to insure its proper reward, and to protect capital that it may reap a reasonable return. Capital and labor are mutually interdependent. One cannot live without the other. Where there is no capital, labor cannot be rewarded, where there is no labor, capital must remain idle and derive no income. This results in stagnation to every department of industry; therefore, the true office of the legislator is to protect both alike. When the legislator does this he has fulfilled an honorable and glorious mission.

DISCRIMINATION.

I observe through the papers that bills have been introduced during the present session, the object of which is to prevent discrimination. In this connection I beg to call your attention to Articles 4251, 4252, 4253, 4254 and 4255 of the Revised Statutes of Texas, an examination of which will show that the commerce of the country is completely protected against discrimination by railways, besides remitting to the person injured the right to recover any other damages incurred by reason of the violation of this provision. These Articles

are full, complete, and effectually provide against discriminating against other lines or as between shippers. I beg leave to also call your attention to Article 4258 B, Section 7, which containing other provisions against discrimination against any person or place in the State and makes the railway company violating the same guilty of extortion.

MAXIMUM RATES.

Other bills provide that the maximum for carrying freight as provided in Article 4258 shall be reduced. It will be found by examination of the freight bills now and heretofore in use on the railroads in Texas, that the products of the field and farm, agricultural implements and all the necessities of life do not reach the maximum now prescribed by law, and that maximum is probably reached in no case except upon very expensive goods, the tonnage on which amount to but little, but the risk to the carrier for their loss or damage is very great in consequence of their great value. To this class belongs silks, laces, fine clothing, and other very expensive goods.

RESTRICTING RATES ON LOCAL BUSINESS TO THE SAME RATES CHARGED ON INTERSTATE COMMERCE.

I have not seen the bill or bills that propose this change in the freight charges of railroads, and can only express my views generally upon that subject. In addition to what I have said upon the rights of railroads under the Act of 1853, we have only to say that if any one of these bills is passed, its tendency will be to reduce the aggregate of earnings of railroads, which they are in no condition to bear, and the railroads, in order to protect themselves, will have to advance the rates on all through business so as to protect the local business of the State. I have said before, and I challenge investigation of the facts—if not believed by any member of the committee, or any member of the Legislature—that no railroad in the

State is now earning money enough to pay its fixed charges. The cry of "watered stock" is the slogan of the hustings. It makes no difference whether a railroad company has a hundred thousand dollars per mile or a thousand dollars per mile of stock, if it never reaches a point to declare any dividends. The earnings of railroads in Texas have not yet reached a point where dividends on stocks or the amount of stock issued per mile has cut the slightest figure in transportation rates.

The cost of operating railroads in Texas—and I may say in most of the Southwestern country—is very much larger than in the States east of the Mississippi River. In Iowa, parts of Illinois, Pennsylvania, Ohio, and in other localities, coal of superior quality costs the railroad companies but little over a dollar per ton, while there is not a railroad company in Texas that gets its coal for less than three dollars per ton, and many of them pay much higher. You will be surprised to learn that the Texas & Pacific Railway Company, which I especially represent, paid last year for fuel nearly seven hundred and fifty thousand dollars, including the New Orleans Division, having a mileage of less than fifteen hundred miles.

The rate of wages, too, is higher; the cost of cars and locomotives is greater, because of long hauls from the shops, where such articles are purchased. All material that goes into our road-beds for original construction and for repairs, the wages of every class of laborers, and indeed everything that goes into the expense account, is much greater in Texas than it is in the States east of the Mississippi River.

THE DEMOCRATIC PLATFORM.

It has been said by Democrats of this body that the State Democratic Platform, adopted at Dallas in August of last year, commits the members of the Legislature to a

Commission Bill. I call your attention to that platform, section 8: "We favor the enactment of such laws as shall restrict the freight charges of railroads and express companies so that they may only yield a fair interest on the money invested in them, and at the same time prevent discrimination in charges against any point in the State;" and after which the resolution passed by a majority of the committee, was enacted, "That the next Legislature shall pass laws defining trust bills and all illegal combinations in restraint of trade, and imposing severe penalties in regard thereto."

This is the whole platform, and nothing is contained in it advocating the passage of a law to create a railroad commission, and is all there is in the platform relating to railroads, most of which is the law to day, and will be found in the Statutes.

All we ask is a fair interest on the money actually invested in railroads, and we are already prevented from unjust discrimination against any points within the State.

In conclusion, Mr. Chairman and gentlemen, I crave your pardon for having reverted at such length to these questions, and if I have contributed anything to illustrate the true condition of the railroad properties of this State, and the relations that exist between the industries developed and developing on the one hand and the railroads on the other, I shall feel that my visit to the capitol has not been in vain. I especially thank you for your courtesy and kindness in granting me this hearing, and beg of you to consider well both sides of the questions before you make an experiment that may prove disastrous to many of the great interests you represent.

REJOINDER OF JOHN C. BROWN TO THE REPLY OF JUDGE
TERRELL TO HIS ARGUMENT OF THE 26TH JANUARY,
1889, BEFORE THE HOUSE COMMITTEE ON INTERNAL
IMPROVEMENTS.

[The Committee adjourned from Saturday until Monday, at Judge Terrell's request,
to give him time to prepare his reply..]

Mr. Chairman and Gentlemen of the Committee :

Judge Terrell with his learning and great ability, has gone over a vast amount of ground. I have taken forty-seven notes, and stopped in despair; and I shall notice only a few of the salient points, and then give a resume of my argument before this committee on Saturday.

In the outset, I desire to say that the distinguished gentleman, without intending it, has uttered sentiments which, upon reflection, I think he will regard as unworthy of him. The whole implication of his argument is that you must believe what he and Henry Clews say, but that the utterances of railroad men are utterly unworthy of trust and confidence. I do not mean to disparage Judge Terrell, but who is Henry Clews? A banker and a broker in New York, who was one of the main conspirators in 1873 with Jay Cook—not Jay Gould—to bring the great financial disaster upon this country which has never been equaled since the organization of the government of the United States. How did he do it? He did it by buying and selling and by encouraging others to speculate in the class of securities he is to-day denouncing. He overbought and went into bankruptcy, and paid his honest creditors at a very low per cent., perhaps ten cents on the dollar. To-day he is a millionaire, and no man, woman or child—although the children might be in rags and the women widows in tears, suffer-

ing for the necessities of life—has ever gone to him and asked for an additional payment, although he has his millions, that has ever received it. He made two immense fortunes out of the very securities he is now denouncing. He is not a railroad builder, he has never built a railroad in his life, and he knows nothing about railroads only so far as he has seen them by riding upon their trains; yet he is arrayed as a witness against honorable gentlemen who are connected with the railroad interests of this country.

And then some unknown and unnamed man is arrayed by Judge Terrell as a witness to prove that railroads could be reproduced in Texas for \$10,000 per mile. Who is that man? Where does he live? What has been his experience? This is even more unreliable testimony than that of Henry Clews. There is not 100 miles of territory in the State of Texas where a railroad is needed to-day, or 100 miles that I have ever seen, where railroads are already built, over which new roads could be constructed at \$10,000 per mile, or the old roads could be reproduced for that sum of money. These are facts; yet we cannot be believed; we are to be falsified; our statements are to be set aside and held for naught, upon the testimony of an unnamed man and upon the testimony of Henry Clews. Is this fair, or is it a legitimate argument before a committee who are seeking for information?

The charge is made that our freight rates were advanced the other day by Waldo. Waldo advances no freight rates; he makes no freight rates; he has not made any freight rates that were to continue for more than ten days at a time, perhaps, on a few occasions; but even that is not done by him now. The rates are made by agreement of the representatives of the railroads and promulgated by Waldo, and Waldo had no more power to make these rates than you had. And yet

it is said that Waldo advanced the rate thirteen cents the other day in St. Louis, and that statement is made upon the authority of a single St. Louis paper. This is the character of evidence adduced against us. If you want evidence, send your committee to the railroad offices and examine their books. It is said some of us keep our offices in New York. I believe but two or three of the railway companies of Texas have offices in New York. The one I represent has a financial office in New York, but it has but one officer there who receives a dollar salary—that is the Secretary and Treasurer, and I believe it costs about \$3,000 or \$4,000 a year. Our general office is in Texas. Every earning and every expense is recorded in our books at Dallas; our statements are made at our Dallas office, and our New York office absolutely cannot manipulate the earnings or the expenses of the Texas & Pacific Railway.

This statement of the gentleman is sheer, wild imagination. It is not new, however; I have heard it time and again before. But we are not the only people who have had the anathemas of the honorable gentleman, by implication, and I mean nothing unkind when I say this. I had handed to me this morning, for the first time, an address delivered before the literary societies of the University of Missouri, on June 1st, 1885, by my distinguished friend; and while I had no time to read it, I intend to do so because I am always interested in reading his productions, and think his style is unsurpassed by any man in the south or southwest. But his imagination gets away with him and goes wild. He has too much poetry, hence the faultiness of his facts.

Speaking about corporations and their evils—after going on for a number of pages upon the subject—he comes down to the remedy:

“The ultimate remedy for the evils threatened, he

remarks, 'the *ultimate* remedy'—not that the remedy has been applied nor is being applied—but “the ultimate
 “remedy in the future for the evils threatened by the
 “growth of corporate power is already at work, and will
 “ultimately triumph in the universal education of the
 “people up to a standard to enable them to understand,
 “and by peaceful methods to enforce their rights. The
 “*present remedy* is to create an intelligent public senti-
 “ment which *will demand* that the law-making depart-
 “ment of the government, which is the Legislative de-
 “partment, shall *be filled with men whom corporations*
 “*cannot control.*”

My friend has been in the Legislature very often, and is, perhaps, better informed on this subject than I am, but I did not know that any corporation was controlling any Legislature in this country or elsewhere. Here is his declaration, however, that the present remedy is to create a healthy public sentiment, “that the law-making department of this government shall be filled with men whom corporations cannot control.” Great heavens, what little confidence he has in you! If corporations control 140 men, which I believe is the number in the two houses of your Legislature—if *corporations control that great number*, what in the name of common sense would become of three little men that the governor would appoint as railroad commissioners?

Now the gentleman is splendid at figures. I never saw a man who could rattle figures off in greater profusion, and I might say, in greater extravagance, than he has done to-day. I should like very much for him to solve that problem; but he continues the subject in that address, “and when they get entirely filled with men
 “whom the corporations cannot control, who will, with-
 “out destroying values, require every corporation cre-
 “ated under laws which reserve the right to control, to
 “pay its debts, divide its property, and close shop in a

“defined period.” I would like to see how a railroad company would divide its property among 2,000 stockholders. How would you go about dividing the property of the Texas & Pacific road among 2,000 stockholders? Or, take a corporation that invested \$75,000 in a compress. He wants our Legislature, who he assumes has the control of corporations, at once, or as soon as possible, to take away the franchise and let the company pay its debts, divide its property and get out of the country; and so he may enumerate all the other corporations. A public corporation, as I understand it, is a municipal corporation. I understand that a railroad or a compress or any other corporation that has money invested in it for profit is a *private* corporation; many of them being devoted, in part or in whole, to public uses.

The Legislature cannot deprive the latter class of chartered rights, unless the corporation has given sufficient cause by its own acts.

Now a railroad becomes a fixture in the country. If you deprive it of its charter for violations thereof, it cannot be run as a railroad, and if you repeal the law authorizing new charters to be obtained, then it cannot renew its charter so as to run its railroad. The courts have held that the property, nevertheless, remains with the owners charged with the debts that have been put upon it; but it cannot be run as a railroad. The only thing left for them would be to take up the rails and the ties and sell them for the best price they can get in the market.

Not only are we regarded by Judge Terrell as very bad men, but the Legislature as well. But the judge ought to know better than I about this, because he has been a member of the Legislature and I never was. He says that I emphasized too much the Brewer case in assuming that the Legislature had no absolute and unlimited control of the railroads. If I mentioned the Brewer

case but once I fail to remember it, and that was only incidental, as it was not a part of the argument I had prepared.

I believe it is the settled law to-day that no Legislative power, under the constitution, can confiscate private property because it is the property of a corporation, while the corporation is legitimately exercising its functions.

Judge Terrell, in the face of the adjudications of the United States Supreme Court, holds a contrary view.

He refers to the Constitution of Illinois and the railway commission appointed under it. There is a broad difference between the constitution of Texas and the constitution of Illinois, as well as other States which have commissioners, but I will pass this over at present as I have not the exact data at hand. He says that in eight other States, *including Tennessee*, there are commissions authorized to fix freight rates. Tennessee has no commission for any purpose. She passed a law authorizing the appointment of a commission, and one was appointed and it lasted a short time, when the Legislature repealed the law by a three-fourths vote. They were instructed by the people to repeal the law, because it was made a question in every county in the State. So there is no luxury of a commission in that State now. That reduces the number to seven, and if you will examine into the seven you will find that only four of those have the right to fix rates, by classification or otherwise.

He says that no one opposes the appointment of a commission except railroad owners. I have seen a great many people, and he will find them here, who oppose the appointment of a railway commission, who are not railroad owners. If I am not mistaken, a great many men in this honorable body, and in the honorable body at the other end of the capitol oppose the appointment of a railway commission; and I reiterate what I said on

Saturday, that Judge Roberts, a man who stands as high as any judicial light in Texas—a man who is widely known as authority on the constitution of Texas—said, in a lecture to his law class, that a railroad commission would be in violation of that constitution. If anybody doubts this, let them inquire at the proper source. I have not seen him, but have read a part of what he wrote and delivered before one of his classes.

Judge Terrell says that I am inconsistent, because at a previous meeting of a committee years ago I said that competition would cure all the evils, and yet that I joined an association to pool earnings. I have no recollection of such statements. I have never belonged to any association in my life that pooled earnings. My road never has been, since I have been connected with it, a member of such an association; yet it would be best, in my opinion, for the commerce of this country if the earnings at competitive points were pooled by a reasonable legal and proper method. But I belong to no association that has done it.

He says that the recent advance in rates will cost Texas \$6,000,000. Here he comes again to that great scattering of figures that no man can keep up with. The charge is utterly without foundation. He says that Texas paid tolls to the railroads amounting to \$31,000,000. Does the gentleman happen to know that of these reported earnings, only about 10 or 12 per cent. are upon local business? The balance is interstate commerce; it is through business, some of it originating in Europe. Much of it comes in bond here and goes to Mexico. It includes business that goes to California or comes from California; business that comes from New York, from St. Louis, from Kansas City and from all other points outside of the borders of Texas. I will say that 15 per cent. is a large estimate of all the earnings of Texas railroads derived from local business. Yet he

would have you believe, (I do not mean that he desired to deceive you, but he simply has not investigated the question), his remarks would tend to make you believe that all of this \$31,000,000 have been entirely drawn from the producer and the consumer of Texas.

This is the total of all gross earnings by railroads in Texas, for the hauling of all freights of every class and description, passengers, mail, express—into and out of and across Texas. When you consider that there are eight thousand two hundred miles of railway in Texas, representing an aggregate cost of nearly three hundred and thirty-five millions of dollars, and many of them running through regions destitute of population and without water, with no coal worth speaking of within the borders of the State, this is a small earning, and I venture the assertion that no eight thousand two hundred miles of railroad in any other State or country can be shown with such small gross earnings. But the distinguished gentleman fails utterly to inform you that this is the gross revenue derived by the railroads, and from that is to be deducted all the expenses of maintaining and renewing the road beds, running trains, keeping up shops, paying salaries and pay-rolls, and all other expenses to which railroads are subject in the operation of their properties. If you will take pains to look at the published statistics from your Auditor's office, you will find that for the twelve months ending the last day of August, 1888, which is the time prescribed by your statutes for railroads to make their sworn statements to the Comptroller, that while the thirty odd railroads in your State, comprising a mileage of about eight thousand two hundred miles, earn, gross, \$31,244,950.07; and actual expense of maintaining the properties, such as repairs to road beds, locomotives, cars, etc., and the actual payment of transportation charges, amounted to about two-thirds of this amount or precisely \$20,270,

737.47, leaving in round numbers eleven millions of dollars to pay interest on the bonded indebtedness and dividends on the stock. You will find further from the statistics that the bonded indebtedness of these roads aggregate \$221,409,340.10, and you will find from examination of Poor's Manual for 1888 that the average interest upon these bonds is six per cent.; some of them bearing four, some five, others six, others seven and others eight. A fair average however is six per cent. This will show a deficit in the interest account of the railroads in Texas for that year of \$2,284,560, without paying any dividend upon the stock; the paid up stock amounting as it does to over one hundred millions of dollars. These are statistics which Judge Terrell, with all of his ingenuity and his distinguished learning, cannot refute by facts or by argument.

My distinguished friend seems to take special exception to what I said on Saturday evening, that this question was fanned up by men who were ambitious of place and power. I did not know he would be so tender. I did not think he would pay any attention to that, because if it did not apply to him I did not think he he would care for it. I did say on Saturday evening that this question was agitated very largely by men who were hunting place and power. I did not say entirely; I did not mean that. Yet I remember distinctly that the distinguished gentleman, since he has brought this question prominently forward, a little more than two years ago canvassed the State upon that question. That was one of the chief themes, and I believe he was a candidate before the legislature. That reminds me of a very good story, which I will tell. There was in Nashville, Tenn., an old, privileged colored man, long ago, who said pretty much what he pleased to almost everybody, and almost everybody took it kindly. He met upon a street corner one day a gentleman who had just

previously made a canvass of the State and got beat. He said something very saucy to Cæsar, and Cæsar spoke very roughly in reply. The gentleman said: "I don't know why you say that to me, Cæsar; you don't know who you are talking to." After a reflective moment Cæsar said, very deliberately: "O, yes, I knows who you is. I remember now dat you'se de gentleman what made a little 'speriment for de United States Senate and got beat."

I grant that any citizen has, as he says, as much right to discuss this question as an agent of a railroad company, and especially one who is not a citizen of the State. I can only claim this as a matter of courtesy. I have the charge of a vast property in my keeping; I am a trustee for that property, and I would violate my trust if I were not to protect it by all honorable means and upon all suitable occasions. The gentleman, I repeat, has as much right to come here, and perhaps more, than I have. I remember, however, reading a long time ago that Cincinnatus was called from his plow by the people into the councils of the nation. It would seem, indeed, that Judge Terrell believes that the people have called for my distinguished friend as the modern Cincinnatus, for he assumes the role of the "Ajax Telemon" of the opposition; and he has a right to repose in that conviction.

The learned gentleman argued more upon the want of wisdom in the passage of the Act of 1853 than he did to disprove my proposition that that act constituted a contract. I said on Saturday, and say again to-day, that the Act of the 7th of February, 1853, was a contract between the State and all the railroads then in existence, and all of them that came into existence up to the adoption of the Constitution of 1876; and all the rights and benefits acquired under the Act of 1853, up to and until the adoption of the Constitution of 1876, were rights vested under a legislative contract, made between the

State and the corporations, and I am able to show by the opinions of the Supreme Court of the United States in more than one case, that they have recognized contracts made by acts of the Legislature with banks and other corporations, and with individuals. He says that when the power to amend or repeal is not reserved, the State can not impair the franchises. That is all right. But in direct conflict with the previous part of his argument and his utterances elsewhere.

Then he brings Mr. Gould into the question. Well, I do not think Mr. Gould is wrong in his statements. All other things being equal, I grant that every corporation is under the reasonable control of the legislative branch of the government; but if the government gives to the railroads, or other corporations, certain rights and privileges which are accepted by such corporations, and in consideration of which capital is invested, and the corporation is exercising those franchises, then the Legislature can not impair those rights by any act, and if the franchises are withdrawn they must be withdrawn by the terms stated in the original grant, or by the law as it existed at the time the original grant was made and to which it referred. If a charter confers undoubted power upon a railroad company to fix its rates of freight up to a given maximum, the Legislature can not afterward revoke that power. If when the charter is granted there is a general law in existence authorizing the Legislature to repeal any law it may make, the Legislature may do it but not so as to divest vested rights. Just as they say in the Georgia case—the case of the Savannah, Florida and Western Railway Company. The Savannah, Florida and Western Railway Company was made up of three corporations. The case was decided by Judge Wood on the circuit, who held that those corporations, although some of them were authorized by their charters to fix their rates up to a maximum, yet

when they reorganized by a new consolidation, the new company lost this right, because the code of Georgia, by one of its sections, provided that no railroad company should organize or reorganize in the State of Georgia without subjecting itself to the right or power of the Legislature to fix rates or to repeal its charter.

The distinguished gentleman says that the Texas & Pacific Railway cannot claim exemption under the Act of 1853, even if valid; because the Texas and Pacific was made up of the Southern Pacific, Southern Transcontinental, Memphis & El Paso, etc., and afterwards consolidated with the New Orleans Pacific. All of the consolidations mentioned by him were approved by the Legislature of the State of Texas except the last, and that, too, before the adoption of the Constitution of 1876, and of course in reference to the Act of 1853. That a consolidation was made with the New Orleans Pacific—a railroad company in another State—is not true. It was not consolidated with the New Orleans Pacific, but the Texas & Pacific purchased its property and stock, which it had a right to do under its charter—the charter of the Southern Transcontinental and the New Orleans Pacific had the statutory and charter right to make the contract. The argument that this affects our rights under the Act of 1853 is very far fetched, and too attenuated and gauzy to require further comment. This is another specimen of the vaulting feats of the gentleman's ambition.

He says that no report appears of the earnings the Texas & Pacific for the year 1887 in the Comptroller's office. If the gentleman will write to New Orleans he will find that the report of the earnings and expenses was made to the court in whose custody and keeping all the affairs of the Texas & Pacific were confided, and controlled by a receiver. But in 1888 I can tell him that the earnings and expenses are in process of being printed now, and that the earnings did not pay the

fixed charges of the road after deducting the expenses of maintenance and operation; and by fixed charges I mean interest on the bonds that were issued, not at the mere will of the Texas & Pacific Railway Company, but by authority of Congress and by authority of the Texas Legislature. In the reorganization we put \$8,000,000 of these bonds out of the way by selling our lands to the holders of them; and we scaled the interest one per cent., making them 5 per cent. bonds. Instead of watering it we have been deducting from it; and although the interest upon the first mortgage bonds is equal to \$625,000 every six months, or \$1,250,000 per annum, our earnings in 1888 will show that we have not made money enough to pay it after deducting the expenses of operation and maintenance and pay anything on a like amount of second mortgage bonds. Our fiscal year ends on the 31st of December. The statement published in the report of the Comptroller is made up to say the 1st of September, of the operation of the road for the previous twelve months, during all of which time it was in the hands of a receiver, under orders of the court, and until October 30th—during the whole of the time, in fact. The report of the Comptroller shows that the amount received for the transportation of passengers was \$1,349,041.04; from the transportation of freight, \$3,005,448.43; for the transportation of mails \$163,625.15; for the transportation of express business, \$136,575.00; miscellaneous, \$69,092.45—total, \$5,023,782.07. Then it shows that the amount paid out for conducting transportation, including repairs of station buildings in Texas, was \$1,240,977.50; for motive power, including machine shops and water stations in Texas, \$1,467,163.19; for maintenance of way in Texas, \$777,397.19; for maintenance of cars, including repairs of car shops in Texas, \$229,344.04; for general expenses, including taxes (taxes estimated), \$217,236.24—total, \$3,932,148.16. Apply that to the \$5,000,000 earned, and

what have you got? It shows the measure of the earnings of the road just as well as if it had not been in the hands of a receiver. There are 5,000 men employed to conduct the business of the road.

But I am astonished at the declaration of the gentleman that the Texas & Pacific Railroad could be reproduced for \$10,000 per mile. It cannot be reproduced for \$30,000 per mile and give it the rolling stock it has. Take any expert who is a thorough railroad man and an honest man and put him down to the figures, and he will show you that it cannot be reproduced for \$30,000 per mile. I know whereof I speak; I have not dreamed through this thing, but have gone through it for days and nights and months and years.

The distinguished gentleman says that the Texas & Pacific received from the Legislature of 1876 an extension of time in which to construct its line, and thereby saved its land grant. There was no extension of time in 1876, nor has there been any legislation by the State of Texas in favor of the Texas & Pacific since the adoption of the Constitution of 1876. Examine your statute books. Nor did the Texas & Pacific ever accept the provisions of the Constitution of 1876. Examine your State department. Therefore we can rely implicitly on the Act of 1853, unless the gentleman can show that the Act of 1853 did not create a contract with the railroads such as fixed vested rights. He says that in 1871 the Legislature left the Texas & Pacific to be controlled by such general laws as controlled other railroads. I did not exactly catch what the gentleman said about Poor's Manual, stating that the Texas & Pacific gathered 7 per cent. from all freight carried, but it is not true that it gathered any such per cent.

The earnings he speaks of, as to some of these roads, are what is left after paying for the maintenance of the roadway and the expense of operation, and do not include

interest upon a dollar of the bonds, nor dividends upon a dollar of the stocks. I was receiver of the Texas & Pacific Railway from December 16, 1885, up to the 30th of October, 1888, and every dollar outside of maintenance and operating expenses was consumed in the purchase and laying of steel rails, buying rolling stock and making other improvements, and the stockholders contributed over \$2,300,000 to putting that road in safe condition, in addition to the earnings.

I remarked just now that the earnings he reports the roads to have had, is gross and estimates nothing for the maintenance of roadway and for rolling stock nor for interest. He says that he does not take bonds into account at all. Why did your Legislature, years ago, authorize railroad companies to issue bonds to aid them in building their roads? Yet, he does not want the roads to pay interest upon them. I infer that he wishes them repudiated. He says the bonds are watered. Watered how? I never heard of watering bonds before. I have heard of *watering stock*, but I do not know how you would go about watering a bond. I will be very frank with you; I suppose that almost every railroad in Texas, and in every new country destitute to a large extent of population and wealth and industry, such as would give freight tonnage—I suppose the great majority of those roads were built by selling the bonds in the market for the highest price that could possibly be obtained for them. No sane man would pay par for bonds to build roads through the plains, such as we found when we extended our road from Fort Worth to the Rio Grande. Not a man in America would pay par for such bonds. If Judge Terrell will negotiate a loan and furnish me a market for the bonds at par, I will agree to build a railroad to and through every county in the State of Texas; but I will not agree to pay interest on the bonds or pay anything to the stockholders.

But the Legislature never complained of this fact, although it was as well known to them then as now. It was not concealed from the public. I conducted, in part, a negotiation for \$12,000,000, to build our Rio Grande division from Fort Worth to El Paso; and it was in all the newspapers what these bonds were rated at. Why did not the Legislature then say, you must not put bonds sold at a discount upon the country and expect to earn the interest out of your freights. Why did not the citizens make a complaint, if they considered that the basis for any wrong existed? If it had been done then, and it could have been shown that it was unlawful then, the bonds would have remained as waste paper. But you have allowed these bonds to be issued, sold in the market and are now held by innocent parties. My honorable friend knew then as well as he knows now, that these bonds were being sold at a heavy discount to build railroads. And they were sold, not to the men who were building the railroads, but to other parties who formed syndicates, built the roads and put the bonds on the market; and the bonds are held now, neither by the original promoters of the road nor the stockholders of the company. These are stubborn facts that you can learn in financial circles everywhere; and what is there wrong in that? If the bonds had not been sold and the money realized, you would have been without these railways to-day; although the distinguished gentleman says that trade is languishing, farms have been mortgaged for more than they can be sold for, and everything is paralyzed. Everything is going where "the woodbine twineth," according to his statements, because of the railroads, when every intelligent man knows that but for the building of the railroads, Texas would not have had a million of population to day, instead of two and one-half millions. Instead of having taxable values such as you now have, your property would not have

been worth one-tenth as much as it is. Suppose you had gone into the market to borrow money upon lands before the Houston & Texas Central, Texas & Pacific and International & Great Northern were built. How much money could you have obtained upon an acre of land? You can get \$30 an acre now; could you have gotten \$3 an acre then? Suppose you had put school lands in the west upon the market; could you have gotten five cents an acre for them? Nobody wanted them. It is true the railroads derived a part of these lands as subsidies, but they enhanced the value of the school lands from five cents an acre to from \$2 to \$4 an acre. Not only that, but they sectionalized and surveyed the school lands, which were equal in acres to the subsidies, and paid the surveyors, and paid for filing the certificates and for all other work, and the State had these school lands located and sectionized without the cost of a dollar; and it cost the railroad that I represent largely over \$500,000 to do that work. Our surveying corps frequently had to have escorts to drive the indians from their path. It was an uninhabited and comparatively unknown country. We ran a line from Dallas to San Diego in 1872 and 1873, which cost over \$600,000 in cash; and for a great part of our road in Western Texas we had to have an escort of cavalry. When the line was located permanently for construction to El Paso, it was necessary to call on General Ord for a mounted squadron to protect, not only the engineers, but the men who were preparing the roadway for the superstructure. Railroad construction has driven the indians out of the country; it has enhanced the value of your lands hundreds of millions of dollars, and yet everything, says Judge Terrell, "is languishing" because of the railroads. I prophecy that very soon the gentleman will imagine that the railroads bring all the thunderstorms, the cyclones, the grasshoppers, the plague, the yellow fever,

and every other evil that humanity is subject to.

The gentleman talks a great deal about discriminating rates. Where are these rates; these low rates he refers to out of Texas? They are made largely by water, a great many of them by sailing vessels and other means of water transportation. A great many of them bring iron in ballast. He says that we charge higher rates in Texas than are exacted in any other state in the Union. The gentleman is utterly and entirely mistaken. California charges more, and Nebraska charges more, and so does Mississippi and many other states which I cannot at this moment enumerate, charge a great deal more on domestic traffic than Texas; and I say, and challenge successful contradiction, that the local traffic does not represent 15 per cent. of the whole amount of traffic carried upon the railroads of Texas. There is no state in the Union as far from the manufactories as Texas that pays a lower rate upon its agricultural implements than Texas; and no state has had a cheaper rate upon wheat going out. Your cotton is nearly all handled by foreign buyers or by eastern spinners and they get rates from here to Liverpool or to Falls River, or to New York. The great bulk of your cotton is carried out by water lines from the port of New Orleans or from the port of Galveston.

The gentleman says that the M. K. & T. road earned enough last year to pay 40 per cent. Forty per cent. on what? Not on its bonds, certainly, for it could not pay anything on its bonds.

And then he says that the reason we pay so much for coal is because Jay Gould owns the Indian Territory coal mines, and that "accounts for the high price of coal paid by Gov. Brown." I have been associated with Mr. Jay Gould in business for four or five years, and if he owns the coal mines in the Indian Territory I do not know it. My understanding is that the McAllister mines

belong largely to the M. K. & T. road; and the H. & T. C. road, which draws its coal principally from the Indian Territory, and in which company Jay Gould does not own one dollar of stock or bonds, pays just as much as we do and a little more. Nor do we draw all of our coal supply from that place. We get coal from Alabama; we get coal down the Mississippi river in barges; we get some from Fort Smith by the 'Frisco line at Paris, and we get coal at Strawn. The coal has been bought at a very low price for Texas. The Texas & Pacific is getting it as cheap as any corporation or individual in Texas. I know what the gas companies are paying and what the railroads are paying, and I say we paid out last year about \$800,000 for coal, bought at the very lowest price at which coal could be brought into Texas from any source whatever. So that the fling made at my statement by the honorable gentleman falls to the ground.

I said on Saturday and I repeat it, that everything in the nature of labor, everything in the nature of railroad material, all rolling stock, all material that goes into the track, either originally or for repairs, costs more in Texas than it does in any section east of the Mississippi river. We have to haul our rails long distances, either from Europe or from the mills one thousand miles north of us, and pay freight on them for that distance if we get them in America, aside from the insurance and all that. The nature of your soil is such that it costs more to keep your roads in order than it does east of the Mississippi river on any line that I know of, except the Mississippi Valley road, which runs right down the Mississippi valley. You cannot ballast a road in Texas for less than \$2,000 a mile, with either stone or gravel, because of the scarcity of those materials and the long hauls. The ties do not last more than five years on your roads, while east of the Mississippi river, in Alabama,

Tennessee, Kentucky or North Carolina, the ties will last seven or eight years. Bridge timbers are subject to the same criticism. Indeed everything that goes into the make-up of a railroad, either for original construction or for repairs and maintenance, costs from 25 to 30 per cent. more in Texas than it does anywhere else. Do you know that there were rails taken out of the track of the Texas & Pacific last year, while I was receiver—iron rails substituted by steel rails—that cost \$80 per ton at Galveston, besides the haul from Galveston; and we could not at that time by rail get within forty miles of the place at which they were to be laid and had to haul them upon ox-carts and wagons at an enormous cost. The roads built during that period paid \$60, \$80, and some as high as \$100 per ton for their rails and correspondingly for all other material and engines and cars, and everything else were in the same ratio. I repeat that you cannot reproduce the Texas & Pacific, the Houston & Texas Central or the International & Great Northern—I do not know so much about the others—for \$30,000 per mile; nor indeed do I believe it could be done for less than \$40,000 per mile and furnish the same rolling stock.

THE LEGAL AUTHORITIES.

The decisions the Supreme Court of the United States in the various cases of the Georgia Railroad and Banking Company vs. Smith et al., Stone et al. vs. *et al.*, the case from Mississippi, do not in any sense weaken the arguments heretofore made in behalf of the railroad companies of Texas, nor is it an answer to our position that under the Constitution of Texas as it now exists the Legislature cannot delegate its power to a commission, or any other agency, to fix rates directly or indirectly by making classifications and supplying rates to those classifications. In the case of the Georgia Railroad & Banking

Company vs. Smith et al., the Supreme Court of the State of Georgia had passed upon the constitutionality of the Commission bill and, under the well established rule of the Supreme Court of the United States, this adjudication of the Supreme Court of the State of Georgia would not be disturbed unless in conflict with the Constitution of the United States. But of far greater importance than all this is the fact that the clause of the Constitution of Georgia, under which the Commission derived its right through the act of the Legislature, is a very different authority to the Legislature from that conferred by *your* constitution. The provision in the Constitution of Georgia is as follows: "The power and authority of regulating railroad freights and passenger tariffs, preventing unjust discriminations and requiring reasonable and just rates of freight and passenger tariff, are hereby conferred on the General Assembly, whose duty it shall be to pass laws regulating freight and passenger tariffs and prohibiting unjust discrimination, and prohibiting said roads from charging other than just and reasonable rates." This provision is *permissive*, while that of Texas is mandatory upon the Legislature to do the act itself. Section 2, Art. 10 of the Constitution of Texas is as follows: "The Legislature *shall* pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and *shall from time to time* pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freights on said railroads, and enforce such laws by adequate penalties." It is obvious to any reflecting mind that the two provisions are very different. In *your* constitution the language is mandatory—that the Legislature *shall* pass laws to correct abuses, and shall from time to time pass laws establishing *reasonable* maximum rates of charges for the

transportation of passengers and freights on said railroads. Now, how can that power be delegated to a deputy? If it is mandatory upon the Legislature to do this thing *from time to time*, and if it is mandatory upon the Legislature to pass laws establishing reasonable maximum rates, it is difficult to see by what power the Legislature can delegate this authority to a forum unknown to the constitution and hitherto unknown to the laws of Texas. It would be a refusal on the part of the Legislature to do for itself what the Constitution says it must do.

In the Georgia constitution the language is: "The power and authority of regulating railroad freights, etc., are hereby conferred on the General Assembly," and it may be said with reason and force that this authority implies the right to select the agencies for exercising that authority. In the Texas constitution it says: "The Legislature *shall* pass laws." In the first it merely authorizes; in the second it makes it mandatory. In the first, coupled with that power and authority, it is authorized to *require* reasonable and just rates of freight and passenger traffic, while in the latter the constitution *commands* that the Legislature *shall* from time to time pass laws establishing reasonable maximum rates of charges for the transportation of freight and passengers. The Legislature, by your constitution, is not only required to pass laws from time to time establishing maximum rates, but to establish *reasonable* maximum rates. How can the Legislature determine whether the maximum rates are reasonable or not if the power rests alone with a commission appointed by the Governor, which is amenable to the Legislature only in so far as the Legislature may have authority to annul their acts and turn them out of office. But while they are in office—and for two years, they may establish the most unreasonable rates conceivable, and rates that would bankrupt the

railroad properties of the State. The Legislature must perform its office by passing a law, and at the same time passing one establishing reasonable maximum rates. If the constitution says the Legislature *shall* fix the rate of taxes on all property within the State of Texas, can any sane man insist that the Legislature can *delegate* that power to a commission of *three men* to be appointed by the Governor? These remarks apply to the other cases cited and to the constitutions of other States.

If the promoters of the commission bills are right in their contention, then it follows as a necessary consequence that the Legislature has also the power to repeal the act of 1879 fixing maximum rates, and confer the power on a commission to fix the rates, maximum or less. And this would be a delegation of a power no less mandatory by the constitution to the Legislature than that part of the provision of the constitution already discussed; indeed, it would be a delegation of the entire power conferred upon the Legislature which we think we have shown is mandatory as conferred by Section 2, of Article 10. It therefore follows that if the Legislature can delegate a part of the power conferred by the constitution, it can confer all of it, and if it has no authority to delegate the power to *fix maximum rates* then it equally follows that it cannot delegate any other power contained in that section and no one will pretend that the power to fix maximum rates can be delegated by the Legislature to anybody else.

It may be added that there cannot be found in the Constitution of Texas authority to the Legislature either by itself or through any agency constituted for that purpose, to *control* railroads. The utmost limit of power that can be inferred from any part of the constitution is that it may in the mode and manner prescribed therein, *regulate*, but it can in no manner *control*. The difference between *regulate* and *control*, as it seems to us, is most

manifest. One mode of regulating is by fixing reasonable maximum rates by direct act of the Legislature, but if a commission is appointed with powers contained in many of the bills now pending before this body, it would be giving to the commission the absolute control of railroads, and depriving the chosen officers, who are authorized by the charters to be the officers in control of the property, of their right to exercise the functions conferred by the charter. The officers of a corporation as well as a corporation itself, are held to strict accountability for the proper conduct and management of the business of the line. They are responsible for damages to and losses of freight, required to keep safe roadways, and the most approved machinery, good rolling stock, etc., but if you put a commission in control of this property, it paralyzes the arm of the officers constituted by the charter, and who are burdened by the responsibility of the law in addition to do what they are required by law to do. Lexicographers define the word "regulate" "to modify, to adjust, to rule or establish a mode, to put in good order, to adjust, methodize, arrange, direct, order" etc., whereas they define the word "control" to mean "exercise restraint, influence, check, restrain, govern, power to rule, curb, etc." Nowhere in the Constitution of Texas, either expressly or by implication, can be found authority lodged in the Legislature to do more than *regulate*. It cannot be inferred from any provision in the constitution that the Legislature has the power to control, such as would be exerted through the influence of a commission, if any one of the commission bills we have seen be made a law.

FURTHER AS TO THE DELEGATION OF LEGISLATIVE POWER.

Judge Cooley, in his excellent work on Constitutional Limitations says:

"One of the settled maxims in constitutional law, is

that the power conferred on the Legislature to make laws can not be delegated to any other body or authority. Where the sovereign power of the State has located the authority there it must remain, and by the constitutional agency alone the law must be made until the constitution itself is changed. The power to whose wisdom, judgment and patriotism, this high prerogative has been intrusted, can not relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the wisdom, judgment or patriotism of another body for those to which alone the people have seen fit to confide this sovereign trust." Cooley's Constitutional Limitations, 4th Ed., pp. 141. In support of this the authority quoted in a foot note from Locke on Civil Government section 142, is as follows: "These are the bounds which the trust which is put in them by the society and the law of God and nature have set to the legislative power of every commonwealth, in all forms of Government: First, They are to govern by promulgated established laws not to be varied in particular cases, but to have one rule for *rich and poor, for the favorite at Court and the countryman at the plough*. Second, These laws also ought to be designated for no other end ultimately, but the good of the people. Third, They must not raise taxes on the property of the people without the consent of the people given by themselves or their deputies. And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies to be from time to time chosen by themselves. Fourth, The legislative neither must nor can transfer the power of making laws to anybody else."

Judge Cooley cites a number of authorities in support of the proposition that we have quoted, among

which is the case of the State vs. Hudson Co. Ave Commissioners, 37 N. J. Law Reps.

The court held that "the Legislature cannot leave it to a Board of Commissioners to say what proportion of expense of laying out and opening a public avenue shall be imposed on the township of a county or wards of a city, and holding that the act of taxation itself, by the Legislature, must distribute the burden and prescribe the standard by which distribution is to be made." The manner of laying out the avenue or avenues is regulated principally by Sec. 11 of the act of the Legislature passed in April 1873, and is as follows: "That the money to pay the entire cost of laying out and opening the said avenue shall be raised by assessing the same upon all lands lying within two thousand feet of the center line of said avenue, and in such proportion upon such piece and parcel of land as in the opinion of the commissioners of assessment shall be equal to the benefit received, and that the money necessary to pay the entire cost and expense of executing this act shall be borne by the public at large of the county of Hudson, etc." And the court in delivering the opinion says: "But from what I have said I think it must be on careful consideration conceded that a power unchecked except by the obligation of fairness and reasonable discretion, is vested in this body of persons to distribute this tax according to its judgment of what is right and just among the various townships in this county. Holding this opinion, it seems to me necessarily to result that this act cannot be enforced. The reason of this conclusion is that the Legislature has transferred to these commissioners a part of the law-making power. A legislative act of taxation, in order to be legal or effectual, must consist of something more than a mere declaration that a certain sum of money shall be raised out of the property within the county. Itself must distribute the burden. This is as essential as

the designation of the amount to be raised. And not only the sum required must be stated and the property out of which it is to be made designated, but also some certain standard of assessment must be established. No act of taxation can omit any of these components. If the Legislature of this State should ordain that a tax of a certain amount should be levied to be distributed among the counties of the State in such proportion as the treasurer in his discretion should direct, it would not probably be denied by anyone that such an act would be entirely inoperative. The act in question is of this character, and is therefore so clearly imperfect as an act of taxation that it must be judicially regarded as a nullity."

We apprehend no authority can be found in the constitution of Texas for the levy of taxes to pay the expense of a railway commission. Your constitution enumerates the subject and objects for which taxes may be levied, and it is a long and full list, but we believe you will fail to find any general authority that would include the expense of a railway commission, and certainly there is no express authority, and the rule is held as the law itself that the expression of one is held to be the exclusion of all others, and would seem to apply here. *What* the expense of a commission may be is a matter of no consequence so far as this proposition is concerned, whether it would be a thousand or a hundred thousand dollars.

In a case from Ohio, cited by Judge Cooley, and which is reported in 1 Ohio State Rep., *Cook, Railroad Company vs. Commissioners Clinton County*, the court held: "The General Assembly, like the other departments of government, exercises only delegated authority, and any act passed by it not falling fairly within the scope of legislative authority, is as clearly void as though expressly prohibited. The power of the General

Assembly to pass laws cannot be delegated by them to any other body or to the people.”

There is a leading case in one of the earlier Tennessee reports, to which we have not access, where the court held that under the Constitution of '96, which authorized and made it the duty of the Legislature to levy and collect taxes for the State and counties, the Legislature subsequently attempted to delegate the power to levy and collect taxes for the counties. The court held that the legislative act of delegation was absolutely null and void. That duty was mandatory upon the Legislature itself and could not be delegated. The result of this was that the Constitution of 1834 authorized the county courts to levy taxes for the revenue of the county, each for itself. Scores of other cases could be cited just as strong, but time will not now permit.

VESTED RIGHTS—EITHER BY CHARTER OR LEGISLATURE.

In the case of the Georgia Railroad and Banking Company *vs.* Smith et al., there is nothing in the opinion of the court or in the facts of that case that militates at all with the position heretofore taken upon the effect of the act of 1853. The provision in the charter of the Georgia Railroad and Banking Company which was under discussion is: “The said company shall at all times have the exclusive right of transportation or conveyance of persons, etc., provided that the charge of transportation or conveyance shall not exceed 50 cents per 100 pounds on heavy articles, 10 cents per cubic foot for articles of measurment for every 100 miles, and 5 cents per mile for every passenger, etc.” This case has certainly gone to the very verge of what might seem to be a divesture of vested rights, but you must not overlook the fact that the term for which the charter was granted had expired before this litigation had commenced and the court could have contented itself by say-

ing that whenever the charter right expired, the right to fix rates and tolls expired, but the court says, "In almost every case which has been before this court, where the power of the State to regulate the rates of charges of railroad companies for the transportation of persons and freight within its jurisdiction has been under consideration, the question discussed has not been the original power of the State over the subject, but whether that power had not been by stipulation of the *charter or other legislation* amounting to a contract, surrendered to the company, or been in some manner qualified. It is only upon the latter point that there have been differences of opinion." The court then proceeding further, says: "The question then arises whether there is, in the 12th section of the charter of the plaintiff in error, a contract that it may make any charges within the limits there designated." The learned judge who delivered the opinion then remarks "that when that charter was framed the provision was made that anyone could run cars upon it upon the payment of established tolls," but further says that "this notion has long since been abandoned as impracticable," and cites *Railroad Company vs. U. S.* 93, U. S. 442. The same section grants to the company the exclusive right of transportation of persons and merchandise over its road, a right which, in another part of the act, is limited to thirty-six years and then expires, unless renewed by the Legislature upon such terms as may be prescribed by law and accepted by the company, and the court remarks that this period has long since expired and no explanation appears on the record that any renewal of the privilege has been granted. The court further remarks: "It would require much clearer language than this to justify us in holding that, notwithstanding altered conditions of the country in the future, the Legislature had (in 1833) contracted that the company might, *for all time* charge

rates for transportation of persons and property over its line up to the limits there designated." The court further states: "It is conceded that a railroad corporation is a private corporation, though its uses are public, and a contract embodied in terms in its provisions or necessarily implied by them, is within the constitutional clause prohibiting legislation impairing the obligation of contracts."

Now compare this language embraced in the charter of the Georgia Railroad Company, with the language contained in the 15th section of the Act of February 7th, 1853. Sec. 15: "It shall be lawful for the Legislature, at any time, to prescribe the rates to be charged for the transportation of persons and property upon any such roads, should they be deemed too high, and may exercise the same power *every ten years*, provided, that no reduction shall be made unless the net profits of the company for the previous ten years, shall amount to a sum equal to twelve per centum per annum, upon its capital stock and then so as not to reduce future probable profits below the said per centum." The language in this is not doubtful. It is susceptible of but one interpretation. It does not provide that any of these companies shall in all time to come, be allowed to charge rates at their will, not to exceed a certain maximum, but simply provides that the Legislature shall establish rates from time to time, if the rates in use by the companies are too high, but that no reduction shall be made in the rates of the railroad companies until the net profits of the companies for the previous ten years have amounted to the sum of 12 per centum per annum upon its capital stock and then so as not to reduce future probable profits below the said per centum per annum. All the terms of the contract appear in this language and all the powers of the Legislature as well as the rates of the railroad corporations. And certainly, if you should be satisfied that this act had the

same effect as an amendment to the charter, you can have no difficulty in determining that it is not in the category of any of the cases cited in reply to it. It matters not whether you consider it in the light of an amendment to the charter or whether you consider it a right that cannot be taken away by the Legislature except on the terms and provisions expressed; that makes no practical difference. And that rights have been conferred by special as well as general laws which have been held by the supreme court to be inviolate and not susceptible of being broken by the Legislature of the state, can be demonstrated by numberless cases. A few may be cited:

In the case above referred to, of the Georgia Railroad & Banking Company, Justice Field, in delivering the opinion of the Court says "but whether that power had been by stipulations of the charter, *or other legislation amounting to a contract*, surrendered to the company, or been in some manner qualified." This opinion clearly implies that the power may be given by stipulation of the charter or other legislation amounting to a contract and further that power can be conferred by legislation amounting to a contract by which the sovereign power of the state surrenders to the company the right to prescribe rates before the passage of such act, and that such a contract is irrevocable so long as it is executed in good faith.

In further support of the proposition that irrevocable rights can be acquired by corporations under general or special laws, we beg to cite the case of Gordon against the Appeal Tax Court, third Howard, U. S. Reports page 133. The Court held in that case that the Legislature of Maryland, by an act passed, exempted both the old and new companies from taxes either of capital, property or stock, on condition that the companies would except the legislation and pay a yearly stipulated sum during the continuation of their charters.

Held that this act was a contract between the State and the Banks, when the Banks accepted it and that the tax levied on the stock in addition to this was illegal, and in violation of the contract made with the Banks through the aforesaid act of the Legislature. In the case of *Branch State Bank of Ohio, vs. Miami Co.*, 16th Howard page 369, the Court says: "The Legislature of the State if not restrained by its Constitution may make a valid and binding contract." The general banking act of Ohio, was not merely declatory of the intent and purpose of the Legislature, but amounted to a contract. This case further also discussed public and private corporations in their relations to the State, styling a municipal corporation as a public one and banks and the like, where private capital was invested, as private corporations and held that the Legislature can control the former class at will, while the latter are protected by legislative contract from adverse legislation.

We cite also case of *Bridge Proprietors vs. Hoboken Co.* 1st, Wallace page 116, in support of the same proposition, that the Statute of the State may create a contract which confers irrevocable rights.

Some cases have been cited in other discussions, alleged to be in conflict. Reference to one or two of them will suffice.

Tilly vs. The Savannah, Florida & Western Railway Company and others, decided by Judge Wood, on the Circuit. There is no principle enunciated in that case that militates with our position. The Savannah, Florida & Western Railroad Company, was made up of several corporations, consolidated, according to law, under the act of the Legislature of Georgia, approved April 16, 1863.

When the act under which the consolidation was made and under which this new corporation was organized, sec-

tions 1651, 1682 of the code, 1863, which took effect Jan. 1, 1863, were in force; the first of these sections provides: "Persons are either natural or artificial: The latter are creatures of the law and except so far as the law forbids, subject to be changed, modified or destroyed at the will of their creator." The second section declares "In all cases of private charters heretofore granted, the State reserves the right to withdraw the franchise, unless the right is expressly negatived in the charter." And the Court then remarks: "From this section of the Code it is apparent that the right, privilege and franchise of the Atlantic & Gulf Railway Company, were subject to alteration, amendment or withdrawal, at the will of the Legislature." And the Court had before that time, held that the consolidation, under the act of April 1863, of the Savannah, Florida & Western Railway Company, and the Atlantic & Gulf Railroad Company, said companies were dissolved and a new corporation was created and that the new corporation became subject to the provisions of the Code above cited, and the Court further recognized the fact that it had been expressly decided by the Supreme Court of Georgia, that all charters granted by the State since the adoption of the Code of 1863 are subject to the provisions of the Code. Thus in the case of the West End Railway Company, vs. Atlanta 49 Ga. 151, the Judge remarks "It must therefore be considered as conclusively settled, that the right of the Atlantic & Gulf Railroad Company to establish its own schedule of freight and fares within certain limits, was subject to legislative modification and control, and that the Savannah, Florida & Western Railroad Company, having succeeded the rights and franchises of the Atlantic & Gulf Company, is subject to the same revisory power," and further remarks, that the case is still further settled by section 8, of the act under which the company was organized, declaring that nothing in

this act shall operate to limit the power of the Legislature to alter, modify or withdraw the charter or franchises herein expressed. The only thing then, that the Court holds, is the power of the Legislature to create a commission, and the same remark make in relation to the Georgia Railway Company and the Mississippi case, will apply to this.

I thank you gentlemen for your patient attention. I hold myself in readiness to support every word I have uttered if called in question. I trust you will reach your conclusion under the sanction of your solemn obligations, inspired by a sense of duty to act fairly with all interests, in such manner as to reflect credit on your great State, and multiply her prosperity a thousand times.

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